

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lincoln and Sherman, Illinois)

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DOCKET FILE COPY ORIGINAL

MM Docket No. 01-120
RM-10126

To: The Secretary

Attention: The Commission

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Federal Communications Commission
Office of Secretary

OPPOSITION TO APPLICATION FOR REVIEW

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February 3, 2005

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Summary of Pleading

This is an opposition filed on behalf of Saga Communications of Illinois, LLC (“Saga”) to an Application for Review filed by a competing radio station licensee, Long Nine, Inc. (“Long Nine”), that seeks review of the action of the Audio Division, Media Bureau, that reallocated FM Channel 230B1 from Lincoln to Sherman, Illinois, and modified Saga’s license for WMHX to operate at Sherman.

Saga shows that much of the information on which Long Nine relies was not filed prior to the date on which the Audio Division adopted the Memorandum Opinion and Order in this case; thus it cannot be considered because it constitutes matters on which the Audio Division did not have an opportunity to pass.

However, should the Commission decide to consider Long Nine’s Application for Review on the merits, Saga shows herein that none of the matters Long Nine raises justifies review of the Memorandum Opinion and Order, or reversal of the action taken therein. The Audio Division was correct when it found that Sherman is independent of Springfield, Illinois, and thus, deserving of a first local service preference.

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OPPOSITION TO APPLICATION FOR REVIEW

Saga Communications of Illinois, LLC ("Saga"), by its attorneys, and pursuant to Section 1.115(d) of the Commission's Rules, respectfully opposes the Application for Review filed January 19, 2005, by Long Nine, Inc. ("Long Nine")¹ that seeks Commission review of the *Memorandum Opinion and Order (Lincoln and Sherman, Illinois)*, DA 04-3808 (published December 20, 2004, 69 Fed. Reg. 75860) ("MO&O"). The MO&O refused to reconsider the action of the Assistant Chief, Audio Division, taken in the Report and Order, *Lincoln and Sherman, IL*, DA 02-687, 67 Fed. Reg. 16652, published April 8, 2002 (herein "R&O"). The R&O quite properly re-allotted FM Channel 230B1 from Lincoln, Illinois, to Sherman, Illinois, as its first local service and modified the license of Saga's Station WMHX(FM)² to reflect the changes. The Audio

¹ Under Section 1.115 of the Commission's Rules, an opposition may be filed within 15 days from the date the application for review was filed; therefore, this opposition is timely filed by February 3, 2005.

² Long Nine erroneously and variously refers to WMHX as "WMHK" and "WHMX," but Saga assumes it means WMHX in each instance.

Division just as properly denied Long Nine's petition for reconsideration. The Commission should deny Long Nine's Application for Review.³ Long Nine's motive in attacking Saga's proposal is simply anti-competitive⁴, and Long Nine's arguments must be taken with a good deal of salt. Long Nine has failed to show why Commission review is warranted.

I. Long Nine's Application for Review is Defective

The centerpiece of Long Nine's application for review is its often repeated but fallacious argument that the Audio Division, in an imagined "rush to judgment in this proceeding," failed to consider facts and arguments raised by Long Nine. The Audio Division did not rush to judgment. This matter has been before the Commission's staff since 2001. The Chief, Allocations Branch, of the former Mass Media Bureau, first decided to grant Saga's proposal in its 2002 R&O.⁵ Based on the information then available from the Census Bureau, Sherman was not located in the Springfield, Illinois, Urbanized Area and Station WMHX would provide only 2.7 percent of the Urbanized Area with a 70 dBu signal. Accordingly, the R&O did not require Saga to submit a showing pursuant to *Faye and Richard Tuck*⁶ to demonstrate that Sherman is independent

³ WMHX is currently operating on program test authority at Sherman with an application for license pending (See File No. BLH- 20041206AAT, filed December 6, 2004).

⁴ Long Nine conveniently fails to mention that it is the licensee of WMAY(AM), and WNNS(FM), Springfield, WQLZ(FM), Taylorville, and WYVR(FM), Petersburg, Illinois, which stations compete for revenue and audience against Saga's stations in the Springfield radio market.

⁵ *Lincoln and Sherman, Illinois*, 17 FCC Rcd 5328 (MMB 2002).

⁶ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *See also Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (A reallocation proposal requires a

of the Springfield Urbanized Area, and therefore, entitled to consideration as a first local service. Long Nine sought reconsideration of the R&O. In part based on Long Nine's petition, on September 3, 2004, the Audio Division released a *Request for Supplemental Information* ("Request").⁷ The Audio Division stated that the 2000 U.S Census confirmed that Sherman is now located in the Springfield Urbanized Area and was located in the Urbanized Area at the time Saga filed its proposal. The Audio Division observed that it is possible to locate the WMHX transmitter to a site that would provide a 70 dBu signal to most, if not all, of the Springfield Urbanized Area, and added:

Had we been aware of the fact that Sherman is located within the Springfield Urbanized Area and/or had Saga Communications proposed such a transmitter site in its petition for rule making, we would have required a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Urbanized Area and therefore entitled to consideration as a first local service. This potential transmitter site relocation has been noted by Long Nine and the *Report and Order* was specifically predicated on the reallocation being a first local service for Sherman. In the event the licensee of Station WMHX subsequently proposes to relocate its transmitter site to a location that would serve more than 50 percent of the Springfield Urbanized Area, the procedure of first proposing only a change in community of license and subsequently proposing the relocation of the transmitter site would effectively circumvent a specific Commission requirement that the licensee submit a showing pursuant to *Faye and Richard Tuck*. [footnote omitted]. In order to avoid any such perception, we are requesting Saga Communications to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Springfield Urbanized Area and therefore entitled to consideration as a first local service regardless of the location of its transmitter site. This would enable us to resolve this matter on the basis of a complete record and address any issue with respect to a two-step procedure to implement a migration of a station from a rural to an urbanized area. [footnote omitted].

On October 12, 2004, Saga filed its response to the Request and served a copy on Long Nine's counsel. Although the Request did not specifically invite a reply from Long

showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area).

⁷ DA 04-2857.

Nine, it could certainly have filed a reply within 10 days of October 12, 2004, as contemplated by Title 47 C. F. R. Section 1.45(b) (including 3 days for mailed service, by October 27, 2004). But, Long Nine didn't file a response by October 27, 2004; it waited more than a month later, until December 2, 2004, to file its "Supplemental Comments of Long Nine, Inc." By then, it was too late. The Audio Division, on December 1, 2004, had adopted the MO&O, which was released on December 3, 2004. Long Nine's failure to timely act, not any rush to judgment by the Audio Division, bars the Commission from considering Long Nine's "Supplemental Comments." Section 1.115(c) of the Rules provides that no application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass. In this case, the Audio Division had no opportunity to pass on the "Supplemental Comments of Long Nine, Inc.," so all references to the statements made therein must be stricken and not considered by the Commission. See *BDPCS, Inc., v. FCC*, 351 F.3d 1177 (D. C. Cir. 2003).

Moreover, Section 1.115(b)(1) of the Commission's Rules requires the application for review to concisely and plainly state the questions presented for review. Under Section 1.115(b)(2) of the Rules, Long Nine was required, but did not specify with particularity, from among the factor(s)⁸ enumerated in the rule which warrant

⁸ The factors are: (i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy; (ii) The action involves a question of law or policy which has not previously been resolved by the Commission; (iii) The action involves application of a precedent or policy which should be overturned or revised; (iv) An erroneous finding as to an important or material question of fact; or (v) Prejudicial procedural error.

Commission consideration of the application for review. Long Nine simply filed a long, rambling, pleading, rehashing prior arguments. Long Nine failed to comply with the requirements of Section 1.115. In light of this, Long Nine's Application for Review is defective and may be dismissed for failure to comply with the Commission's procedural rules.

II. Even if Considered on the Merits, Long Nine's Application for Review Does Not Justify Commission Review of the MO&O

But, even if Long Nine's "Supplemental Comments" had been filed prior to adoption of the MO&O so that the material therein could be considered by the Audio Division, and Long Nine had bothered to follow the procedural rules, Long Nine's efforts would have been ineffective to justify reconsideration of the Audio Division's decision. In summary, Saga requested the changes to the Table of Allotments pursuant to Section 1.420(i) of the Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, the Commission compares the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments based on the FM allotment priorities in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1988).⁹ The Audio Division refused to reconsider the R&O because, under Priority 3 of the FM Allotment Priorities, the reallocation of Channel 230B1 to Sherman as the community's first local transmission service would be

⁹ The priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

preferred to the retention of the channel at Lincoln since Lincoln has two other transmission services; i.e., WLNK(FM) and WLLM(AM). Long Nine argues that “the Media Bureau erred in its determination that the proposed relocation is in the public interest and the Commission should reverse the Bureau’s decision...” Saga has twice previously shown that Long Nine’s position is incorrect. The Bureau has twice correctly determined that the reallocation of Channel 230B1 to Sherman is entitled to consideration as a first local service: “The *Report and Order* provided Sherman with a first local service. This represents a significant public interest benefit notwithstanding that Sherman is located within the Springfield Urbanized Area.” The Audio Division then went on to carefully analyze the various factors under *Tuck* that support the Audio Division’s conclusion. Long Nine argues that a “*significant*” showing of independence is required to satisfy the *Tuck* analysis.¹⁰ Saga’s un rebutted showing of independence was a satisfactory showing, and the Audio Division accepted it as such.

In the unlikely event that the Commission considers Long Nine’s Application for Review on the merits, Saga responds herein to the matters raised in the pleading. Long Nine raises two issues which are easily addressed: (A) Whether Sherman is independent of the Springfield Urbanized Area; and (B) Whether the Media Bureau erred in affirming its determination that Saga’s proposal would result in a preferential arrangement of allotments. An analysis of the record shows that Sherman is independent

¹⁰ In *Eatonton and Sandy Springs, Georgia*, 6 FCC Rcd 6580 (1991), cited by Long Nine, the Chief, Mass Media Bureau, refused to award a first local service preference to a proposal to re-allocate an FM channel from Anniston, Alabama, to Sandy Springs, Georgia, because Sandy Springs was not independent from Atlanta, Georgia. This decision was the result of many factors that supported this finding. Long Nine has not shown that the factors in this case are even remotely similar to those in the cited cases.

and that Saga's proposal would result in a preferential allotment arrangement under Section 307(b) of the Communications Act.¹¹

**A. The Evidence Shows that Sherman is Independent
of the Springfield Urbanized Area.**

At p. 5, Long Nine argues that Saga's *Tuck* showing was " cursory and insufficient" to show that Sherman is independent of the Springfield Urbanized Area. Long Nine goes on in an attempt to obtain Commission review of matters never properly brought before the Audio Division, due to Long Nine's failure to timely file a response to Saga's *Tuck* showing, as discussed *supra*. As a result, Saga's *Tuck* showing stands un rebutted on the record.¹² However, Saga shows herein, in an abundance of caution, why the Commission should deny Long Nine's application for review on the merits.

Long Nine argues that, should the Media Bureau's decision stand, Saga would undoubtedly move the WMHX transmitter site to a location that would blanket the Springfield Urbanized Area. The Audio Division was unconcerned by this possibility:

As stated earlier, we recognize that Station WMHX could relocate its transmitter site to a location that would serve most, if not all, of the Springfield Urbanized Area. This does not support a conclusion that Sherman is not entitled to consideration as a first local service. As a Class B1 facility, Station WMHX will serve a large area and any transmitter site closer to Springfield will invariably serve a large portion of the Springfield Urbanized Area.

So, the Audio Division clearly addressed Long Nine's concerns, and disposed of them favorably to Saga. The Audio Division ignored none of the arguments raised by Long Nine. Moreover, Long Nine failed to support this argument with any controlling precedent, required to obtain Commission review under Section 1.115.

¹¹ 47 U. S. C. §307(b).

¹² On December 14, 2004, Saga filed in this docket a suggestion of mootness as to Long Nine's late-filed response.

At p. 6, Long Nine argues that the population difference between Sherman and the Springfield Urbanized Area compelled Saga to make a *significant* showing of independence of Sherman. Saga made a showing of independence, but Long Nine failed timely to rebut it. Long Nine cannot be heard now to complain about a situation that it caused. The Audio Division considered the issue of population differential and found that “a percentage of less than one per cent has not precluded favorable consideration as a first local service,” citing *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996).

Then, at pp. 7-12, Long Nine attempts to show that the Audio Division’s analysis of other *Tuck* factors was erroneous. But, the Audio Division found that “a majority of the eight *Tuck* factors that the Commission has set forth for assessing the independence of a suburban community support a determination that Sherman is independent of the Springfield Urbanized Area and entitled to consideration as a first local service.” The Audio Division cited *Jupiter and Hobe Sound, Florida*, 12 CC Rcd 3570 (MMB 1997), and Long Nine has not shown that this case is not controlling on this issue. Saga addresses each of the independence subfactors herein:

Factor I – The Extent to which Sherman Residents Work in Springfield.

Long Nine cites *Pleasanton, Bandera, Hondo and Schertz, Texas*, 15 FCC Rcd 3068 (2000) for the proposition that providing a list of businesses is insufficient to establish that a majority of residents live and work in the community under a *Tuck* analysis. The Audio Division found that Saga’s information on travel patterns “coupled with the numerous local businesses identified by Saga Communications in its Response to Request for Supplemental Information, is sufficient to support a favorable finding on this

factor.” The Audio Division did not rely solely on Saga’s list of Sherman businesses. Long Nine, although attempting to discredit Saga’s information on this factor, did not submit any probative evidence to the contrary. Supporting its favorable finding under the first factor based on this information, the Audio Division cited *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, 16 FCC Rcd 3411 (MMB 2001), *recon. denied* 19 FCC Rcd 1603 (2004) (16 percent of workforce employed in community sufficient to support a favorable finding on this factor); *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 2240 (MB 2003), *app for review pending* (39 percent of workforce employed in community sufficient to support a favorable finding on this factor). The principle stated in *Pleasanton, Bandera, Hondo and Shertz, Texas*, cited by Long Nine, has been effectively modified by the above later cases cited by the Audio Division in the MO&O. There is no absolute requirement that a “majority” of the residents work in the community.

Factor II – Whether Sherman Has Its Own Newspaper or Other Media. The Audio Division could not make a favorable finding on this factor, and Long Nine’s emphasis of this finding is mere surplusage.

Factors III and IV– Whether Sherman’s Leaders and Residents Perceive Sherman as Being an Integral Part of, or Separate from Springfield and whether Sherman Has its Own Local Government. Long Nine criticizes Saga for providing a single “statement” from the President (Mayor) of Sherman, and argues, without support, that self-governance should be afforded “little weight.” (Long Nine ignores another aspect of the case it cited, *Pleasanton, supra*, where a successful proposal was supported by only one letter from a city official, which the Allocations Branch said it believed “is a

satisfactory showing with sufficient documentation.”) The Audio Division had no problem with Saga’s un rebutted showing in this regard, finding that “the third factor, perception of community leaders and residents, and the fourth factor, local government and elected officials, clearly support a determination concerning the independence of Sherman. Saga Communications has submitted a letter from the Mayor of Sherman attesting to fact that Sherman was incorporated in 1959 and is a separate and distinct community. Sherman is governed by a mayor and a six elected trustees. According to the Mayor, Sherman has its own businesses, churches and civic organizations and does not rely on Springfield for police, fire protection, schools and libraries.” Long Nine cites *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 at ¶ 9(c) for the proposition that Factors IV and V are afforded little weight, but the statement in the case appears to be dicta since the Allocations Branch made the allotment of Channel 265A from Albemarle (population 14,939) to Indian Trail (population 1,942) located within the Charlotte, North Carolina, Urbanized Area. However, to address Long Nine’s quibble that Saga filed only a single statement from a Sherman resident, Saga is attaching¹³ to this pleading copies of declarations from 54 residents of Sherman, all attesting that they reside in Sherman, that they are employed in Sherman, and that they perceive Sherman as being separate from the Springfield, Illinois, Urbanized area. Supporting their perception of being separate from Springfield, several of the declarants mentioned that Sherman is separated geographically from Springfield by the Sangamon River, and many cited Sherman’s separate taxing body, police, fire department, and schools. They also express their desire for the Commission not to change its decision since there is a need for a local

¹³ Attachment 1.

station to serve the needs and interests of residents of Sherman. To the extent that the Commission considers any of the material late-filed by Long Nine, Saga requests leave to submit the declarations as rebuttal evidence.

Factor V – Whether Sherman Has its Own Telephone Book or Zip Code –

The Audio Division, even though Sherman has its own zip code, was unable to make a favorable finding under the fifth factor because Sherman does not have its own telephone book. Saga believes the Audio Division erred in this finding, since a post office and zip code are strong evidence of independence, but in light of the ultimate finding of Sherman's independence, Saga believes this was harmless error. Again, Long Nine's commentes are mere surplusage.

Factor VI – Commercial Establishments and Health Facilities. Here again, Long Nine criticizes Saga for providing a "brief list" of businesses. Although the Audio Division made a favorable finding under the sixth factor regarding commercial establishments and health facilities, Saga provides the following list of businesses and organizations to address Long Nine's extra-record showings, and requests that, should the Commission consider Long Nine's material, it also consider Saga's as rebuttal evidence:

Following is a list of 73 businesses and organizations in Sherman:¹⁴

BUSINESS NAME	ADDRESS	PHONE #
Advanced Audio Video	515 Pheasant Run, Sherman	496-3661
All His Children	615 St. Johns, Sherman	496-2792/496-2798
Animal Health Center	2816 E Andrew Rd, Sherman	496-2346
Antonio's Pizza	420 Crossing, Sherman	496-2369
Barbian, Donna L Insurance	2555 E Andrew Rd, Sherman	496-2333
Bowen, Steve	318 S Crossing Rd, Sherman	496-2341

¹⁴ Saga listed 42 such businesses and organizations in its Response to the Request.

Bunchman, Donald	34 Cabin Smoke Tr, Sherman	522-1850
Cancun Inc.	1 Crossing Mall, Sherman	469-3221
Carter Bros Lumber	1800 S Sherman Blvd	496-2363
Central Illinois Plastering	408 Lakeview Dr, Sherman	496-2600
The Clothing Rack	271 S Sherman Rd, Sherman	496-3633
Country Insurance & Financial Services	318 S Crossing Dr, Sherman	496-2341
Curves For Women	420 Crossing Rd, Sherman	496-3940
Donley Coiffures		496-2222
Donley Delmar Trucking	RR1, Sherman	566-3561
Double H Bar	121 N 1st, Sherman	496-3811
Edward Jones Investments	420 Crossing Dr, Sherman	496-3611
Emerson, Mark Rev	425 Ramblewood Ln, Sherman	496-3426
End of the Rainbow	2555 E Andrew Rd, Sherman	496-2687
Evans & Associates		496-3396
Faith Outreach Christian Church	125 E Main, Sherman	496-3588
Family Video	210 E Andrew Rd, Sherman	496-2464
Fancy Creek Farms	3795 Sherman Rd, Sherman	496-3144
Fetter's Quik Mart	6500 Business I-55	496-2092
Final Four Bar	128 N 1st, Sherman	496-3490
Finks Cleaners of Sherman	420 Crossing Rd, Sherman	496-2970
Finley Milling Inc		496-3550
Frontier Adjusters		496-2425/496-3091
George's Amoco		496-2812/496-9280
Giacomini, Jim		496-2288
Good Shepard Lutheran Church	6086 Business Interstate 55, Sherman	496-3149
Gordon's Plumbing		496-2158
Graue's Route 66 Motors Inc	100 Corvette Dr, Sherman	496-2121
Heartland Worship Center	6800 Bahr Rd	496-3888
Herbalife Independent Distributor	437 Turtle Dove Dr, Sherman	496-3807
Henderson Construction		496-2869
Illinois Sheriffs' Association	380 W Andrew Rd, Sherman	496-2371
Impressions of Style	501 Charter Oak Dr, Sherman	496-3324
IQuest Inc	512 Worthington, Sherman	496-3561
Just For Kids Daycare	2585 E Andrew, Sherman	496-2244
Just Kids	6305 Business I55, Sherman	496-3800
Larson Carpentry Inc	320 Crossing Dr, Sherman	496-3225
Law Enforcement Training Advisory Comm MTU10	380 Andrew Rd, Sherman	496-3211
Living Faith Baptist	7575 W Outer Rd, Sherman	496-2590
Lobue, Donald A Law Offices	2555 E Andrew Rd, Sherman	496-2304
Manning, David R DVM	2816 E Andrew Rd, Sherman	496-2346/496-2317
Miller, Lee	318 S Crossing, Sherman	496-2341
Multi-Media Memories	613 Flagglan Dr, Sherman	496-9064

Nelson Wall Systems	134 N 1st, Sherman	496-2864
Nessler, Frederic W & Associates	3755 Sherman Rd, Sherman	496-2442
Pine Crest Farm	4674 Starwalt Ln, Sherman	496-2474
Pollvich, Glenn DC	420 Crossing Dr, Sherman	496-3636
Pyramid Builders		496-2288
Richardson's Power Wash	5670 Guest Rd, Sherman	496-3182
Sam's Too Italian Pizza	312 Crossing Dr, Sherman	496-2374
Schuh, D		496-3386
Second Time Around	271 S Sherman Rd, Sherman	496-3338
Sherman Athletic Club & Ballpark	300 S First, Sherman	496-3122/496-2454
Sherman Chiropractic & Laser Center	420 Crossing Dr, Sherman	496-3636
Sherman Church of the Nazarene	7085 Village Center Rd, Sherman	496-3255
Sherman Public Library District	2100 E Andrew Rd, Sherman	496-2496/496-2357
Sherman Super Wash Inc	290 S Crossing Dr., Sherman	496-3459
Sherman United Methodist Church	2336 E Andrew Rd, Sherman	496-2338/496-2570
Spencer Investigation		496-3752
Standefer Lawn Care Inc	5438 Forrest Ln, Sherman	496-2336
Steve's Crane Service	437 Turtle Dove Dr, Sherman	496-2800
Subway of Sherman	420 S Crossing Dr, Sherman	496-2929
Supreme Clean		496-3261
US Stonerreprs		496-2700
Walker Standardbreds	7793 Farrand Rd, Sherman	496-2378
Wilfong, Dale Rev	208 Middleburg Dr, Sherman	496-2570
Williamsville State Bank & Trust	6092 Business I 55, Sherman	496-2383
Zinn Construction LLC	1315 Arlington Chase, Sherman	496-3112

Saga is also attaching ¹⁵ to this pleading a list of persons who are self-employed and run businesses out of their homes in Sherman.¹⁶ Long Nine inexplicably cites *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia*, 11 FCC Rcd 5758 (1996) at ¶11. That case supported the reallocation of Channel 243B from Williamsburg to Fort Lee, Virginia, despite the fact that Fort Lee had a 1990 population

¹⁵ Attachment 2.

¹⁶ Saga attempted to verify Long Nine's statement that Sherman does not have a traditional grocery store and found this to be true, however, in light of the numerous other businesses and organizations in Sherman, including three restaurants and a Quikmart convenience store this is of no consequence. Sherman residents can eat at a restaurant or purchase milk and other products in the community.

of 6,895, Petersburg had a 1990 population of 38,386 and the station would place a city grade signal over 100% of the Petersburg, Virginia, Urbanized Area. It actually supports the Audio Division's action in allotting Channel 230B1 to Sherman.

Factor VII – Scope of Advertising Market. The Audio Division was unable to make a favorable finding on the seventh factor because Sherman and Springfield are part of the same advertising market, but Long Nine's conclusion that this demonstrates dependence on Springfield is mere speculation and must not be considered.

Factor VIII – Sherman's Municipal Services. The Audio Division made a favorable finding regarding the eighth factor, the extent to which Sherman relies on Springfield for municipal services, since Sherman has its own police and volunteer fire department and, as stated earlier, does not rely on Springfield for other municipal services. Long Nine argues with the Audio Division's conclusions here because, *inter alia*, Sherman has no high schools. The Audio Division was entirely correct in this finding.¹⁷

Summary. The Audio Division found, "a majority of the eight *Tuck* factors that the Commission has set forth for assessing the independence of a suburban community support a determination that Sherman is independent of the Springfield Urbanized Area

¹⁷ Long Nine's citation of *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D. C. Cir. 1951) and *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990) does not support a contrary finding. In *RKO General, Inc.*, the Commission disposed of a comparative hearing proceeding and discussed *Huntington* and its corollary, *Faye & Richard Tuck, supra*. The Commission found that Richmond, California, was interdependent on San Francisco and refused to grant Richmond a Section 307(b) preference. The evidence showed that the Richmond applicant proposed a facility that duplicated the facilities relinquished by Station KFRC, San Francisco. This factor indicated that San Francisco metropolitan service was intended by the facilities applied for rather than service to Richmond. Long Nine has failed to demonstrate that the *Huntington/RKO* situation exists here.

and entitled to consideration as a first local service.” The Audio Division’s R&O was correct, and supported by clear precedent. It should not be changed upon review.

B. The Media Bureau Was Correct in Affirming Its Determination that Saga’s Proposal Would Result in a Preferential Arrangement of Allotments.

Long Nine concludes its Application for Review with a general broadside that Saga’s proposal should not have been awarded a first local service preference. Saga disagrees. Again, Long Nine seeks to criticize the Bureau for its “hasty determination that the proposed reallocation of WMHX(FM) is in the public interest,” while not discussing the level of service that would remain for the residents of Lincoln. First, as noted *supra*, the Audio Division’s decision was not “hasty.” There was no “rush to judgment.” The case took four years to reach this point. Long Nine simply failed to timely file anything to rebut Saga’s *Tuck* showing and now is trying to repair its own error. Moreover, the Audio Division considered, at MO&O ¶2, the fact that Lincoln would continue to receive local service from AM Station WLLM and noncommercial educational FM station WLNK. *Fairfield and Norwood, Ohio*, 7 FCC Rcd 2377 (MMB 1992), cited by Long Nine, is inapposite. There, the proposal would have resulted in a loss of Fairfield’s only local nighttime, and only competitive, transmission service. That is not the instant case. Long Nine also cites *Greenfield and Del Ray Oaks, California*, 11 FCC Rcd 12681, ¶10 (Allocations Branch 1996), but that case is distinguishable because Greenfield had only one other local radio station and Del Ray Oaks failed the *Tuck* test. Here, Saga has shown that Sherman meets the *Tuck* criteria.

C. Saga’s Proposal Is Consistent with Other Allotment Decisions.

Despite Long Nine’s too-late protestations, Saga’s proposal represents a preferential arrangement of allotments and is consistent with precedent. For example,

Long Nine does not cite *Macon, Hampton and Roswell, Georgia*, 13 FCC Rcd 18807 (Allocations Branch 1998). In that case, Channel 300C1 was reallocated from Macon to Hampton, Georgia, despite the fact that Hampton is 1/150th the size of Atlanta (2,694 vs 415,200 persons, 1990 Census), that Hampton was only 5 miles from the Atlanta Urbanized Area boundaries, and that the transmitter site of the Hampton station could cover 50% or more of Atlanta. Because there was a settlement, the Audio Division was not required to decide the issue. However, the allotment was made based on these facts. The bottom line is, the decision to reallocate Channel 230B1 from Lincoln to Sherman was supported by precedent.

III. Conclusion

Long Nine has utterly failed to present any evidence that would justify reversal of the action of the Audio Division. It failed, when it had the opportunity, to respond to the information provided in Saga's "Response to Supplemental Comments" which stand un rebutted on this record. Long Nine cannot invoke the Commission's review function over matters the Audio Division has no opportunity to pass. Long Nine's Application for Review should promptly be denied.

Respectfully submitted,

**SAGA COMMUNICATIONS
OF ILLINOIS, LLC**

By: 

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Its Attorney

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, DC 20016
202-363-4560

February 3, 2005

ATTACHMENT 1

DECLARATION

I am submitting this declaration under penalty of perjury to the Federal Communications Commission at the request of Saga Communications of Illinois, LLC.

My name is Vicki Bryant and I reside
at 102 E. Main, Sherman, Illinois.

I have resided in Sherman since _____. I am employed at Curves, which
is located at Crossing Drive in Sherman.

As a resident of Sherman, I perceive Sherman as being separate from the Springfield, Illinois, Urbanized Area. This perception is based on the following factors:

We have our own governing Mayor
& Board of Alder. Our taxes are more
utilities are higher.

The Sangamon River separates us initially
& our crime rate is much lower we
have our own police officers to patrol
our town. Sherman is growing but hope
fully we'll never become Springfield

I urge the FCC not to change its decision to assign WMHX to Sherman as its first and

only local radio station, since there is a need for a local station to serve the needs and

interests of residents of Sherman, like me.

I feel you will be welcomed
with open arms from all the local businesses
& people

Executed this 27 day of December, 2004.

/s/ Vicki Bryant 217-496-2681

(Printed Name and Telephone No.)

DECLARATION

I am submitting this declaration under penalty of perjury to the Federal Communications Commission at the request of Saga Communications of Illinois, LLC.

My name is Glenn Allison and I reside
at 2548 E. Andrew Rd, Sherman, Illinois.

I have resided in Sherman since 1968. I am employed at Retired, which
is located at _____ in Sherman.

As a resident of Sherman, I perceive Sherman as being separate from the Springfield, Illinois, Urbanized Area. This perception is based on the following factors:

Sherman is a self-supporting community.
We have our own police department,
Fire department, Library, Schools
and a modest business community.
We enjoy a very low crime rate,
and we are a community of good
neighbors.

I urge the FCC not to change its decision to assign WMHX to Sherman as its first and
only local radio station, since there is a need for a local station to serve the needs and
interests of residents of Sherman, like me.

Executed this 28 day of December, 2004.

/s/ Glenn K. Allison

(Printed Name and Telephone No.)

217-446-2419

DECLARATION

I am submitting this declaration under penalty of perjury to the Federal Communications Commission at the request of Saga Communications of Illinois, LLC.

My name is Randolph A. Burge and I reside
at 312 Belmont Street, Sherman, Illinois.

I have resided in Sherman since 1980. I am employed at Sherman Fire Protection District which
is located at 2215 E. Andrew Rd. in Sherman.

As a resident of Sherman, I perceive Sherman as being separate from the Springfield, Illinois, Urbanized Area. This perception is based on the following factors:

Sherman has its own government, fire protection district, and library district.

Sherman is separated from the city of Springfield by a river valley that acts as a natural boundary between the two.

Sherman residents consider themselves to be living in a small town vs. in the city of Springfield.

I urge the FCC not to change its decision to assign WMHX to Sherman as its first and only local radio station, since there is a need for a local station to serve the needs and interests of residents of Sherman, like me.

Executed this ____ day of December, 2004.

/s/ Randolph A. Burge 217/496-2984

(Printed Name and Telephone No.)

DECLARATION

I am submitting this declaration under penalty of perjury to the Federal Communications Commission at the request of Saga Communications of Illinois, LLC.

My name is C. Richard Coon and I reside
at 512 HARTFORD, Sherman, Illinois. *Sherman Fire Protection Dist.*
I have resided in Sherman since 1970 I am employed at _____, which
is located at 2215 E. ANDREW RD in Sherman.

As a resident of Sherman, I perceive Sherman as being separate from the Springfield, Illinois, Urbanized Area. This perception is based on the following factors:

Sherman is an incorporated Village Separate from Spfld.
Sherman has its own Fire Dept.
Sherman has its own City Government

I urge the FCC not to change its decision to assign WMHX to Sherman as its first and only local radio station, since there is a need for a local station to serve the needs and interests of residents of Sherman, like me.

Executed this 27 day of December, 2004.

/s/ C. Richard Coon

(Printed Name and Telephone No.)

217.496.2213

DECLARATION

I am submitting this declaration under penalty of perjury to the Federal Communications Commission at the request of Saga Communications of Illinois, LLC.

My name is Devan Sample and I reside
at 9674 State Rte. 124, Sherman, Illinois.

I have resided in Sherman since 1989. I am employed at Sumc, which
is located at 2336 E. Andrew Road in Sherman.

As a resident of Sherman, I perceive Sherman as being separate from the Springfield, Illinois, Urbanized Area. This perception is based on the following factors:

Sherman has a separate post office, separate
schools than Springfield.

I urge the FCC not to change its decision to assign WMHX to Sherman as its first and
only local radio station, since there is a need for a local station to serve the needs and
interests of residents of Sherman, like me.

Executed this 26 day of December, 2004.

/s/ Devan Sample, 414-7504

(Printed Name and Telephone No.)